

## **DRAWING AMENDMENTS**

Figure 1 was objected to as lacking a legend such as “Prior Art.” A replacement Figure 1 with “Prior Art” added is provided. Thus, the objection is overcome.

The drawings were rejected under 37 C.F.R. § 1.84(c) for failing to show all master distribution switch ports of claim 1. However, Figures 3, 4, and 5 show examples of a master chassis having multiple ports (more than three in Figures 4 and 5). Thus, it is submitted that all the elements of claim 1 are shown and that the drawings comply with C.F.R. § 1.84(c).

## **REMARKS**

In the Office action dated March 18, 2008, claims 1-12 and 14-37 were rejected. Reconsideration of all rejected claims is requested in light of the amendments to the claims and the arguments presented below.

### **Claim Objections**

Claims 15-18 and 22 were objected to. Claims 15-18 and 22 are amended as required. Thus, the objections are overcome.

### **Claim rejections under 35 U.S.C. § 101**

Claims 31-32 were rejected under 35 U.S.C. 101 as allegedly being directed to non-statutory subject matter. Claims 31-32 have been amended as suggested. Thus, the rejection is overcome.

### **Claim rejections under 35 U.S.C. § 112**

Claims 1-12 and 31-32 were rejected under 35 U.S.C. 112 as indefinite. Claim 1 is amended so that distribution switches in the slave distribution switch chassis are referred to as “slave” distribution switches, not “master” distribution switches. Also, “slave chassis” is amended to “master chassis” at line 17, so that the claim now recites “a first slave distribution switch port configured for communication with the master chassis.” Claim 1 as amended is submitted to be definite and in compliance with 35 U.S.C. 112.

Claims 31 and 32 were rejected as indefinite. Claims 31 and 32 are amended as suggested. Claims 31 and 32 as amended no longer contain the language on which the rejection was based. Thus, the rejections are overcome.

### **Claim rejections under 35 U.S.C. § 102**

Claims 14, 23-28 and 30-32 were rejected under 35 U.S.C. 102(e) as being anticipated by Shinomiya (U.S. 2003/0037165). Claim 14 recites, “the virtual switch is configured to receive instructions regarding management of the network from the satellite switch.” The Office action cited hub (2) as the satellite switch. However, it does not appear that virtual router (3) receives instructions regarding management of the network from hub (2). In particular, the cited text (paragraphs [0182]-[0186]) does not indicate that virtual router (3) receives such instructions from hub (2), either via substitute router (6), or otherwise. Clarification of this point is requested.

Furthermore, it is submitted that hub (2) is not a satellite switch. The Office action asserted (in “Response to Arguments”), that switch (2) was a satellite switch. However, Shinomiya does not appear to indicate that hub (2) is a satellite switch and no other basis was provided for this assertion. It is submitted that hub (2) is not a satellite switch, giving the term its plain meaning. “Plain meaning” refers to the ordinary and customary meaning given to the term by those of ordinary skill in the art,” MPEP 2111.01 III. Because one of ordinary skill would not consider hub (2) to be a satellite switch, it does not fall within the plain meaning of the term. Because these features of claim 14 have not been identified in the reference, claim 14 is submitted to be allowable.

Claims 15-29 depend from claim 14 and are submitted to be allowable at least for depending from an allowable base claim. Furthermore, claims 15-29 recite additional claim elements that have not been shown.

For example, claim 25 as amended recites, “forming the virtual switch link to include a data virtual switch link and a physically separate control virtual switch link.” No such physically separate data and control virtual switch links have been identified in the reference.

Claim 26 recites, “updating layer 2 forwarding tables” in both the master chassis and slave chassis, and “correcting inconsistencies” between them. In contrast, the cited portions of the reference (Figs. 9A-9C and paragraphs [0090]-[0096]) relate to router, subnet, and packet information, and do not appear to address correction of inconsistencies between master and slave.

Claims 30 and 31 were rejected on the same basis as claim 14. However, claims 30 and 31 recite, “the virtual switch is configured to receive instructions regarding management of the network from the satellite switch.” As discussed with respect to claim 14, these claim elements have not been shown in the cited reference. Therefore, claims 30 and 31 are submitted to be allowable. Claim 32 is submitted to be allowable at least for depending from an allowable base claim.

#### **Claim rejections under 35 U.S.C. § 103**

Claims 1-6, 8-11, 13, 15-22, and 29 were rejected under 35 U.S.C. 103(a) as being unpatentable over Shinomiya (U.S. 2003/0037165) in view of Walsh et al. (U.S. 2002/0099972). Claim 1 recites a master distribution switch chassis comprising first, second, and third master distribution switch ports configured “for communication with the slave chassis,” “to receive management instructions from a satellite switch,” and “to send configuration and management instructions to the core switches” respectively. No such ports are shown in the cited portions of Shinomiya. In particular, Figure 14 of Shinomiya shows one link from master router 3-1 to NW

and another link from master router 3-1 to hub 2, but does not show any direct link between master router 3-1 and backup router 3-2. Shinomiya does not appear to otherwise indicate a port in one of these routers for communication with the other router. Thus, at least “a first master distribution switch port configured for communication with the slave chassis over a virtual switch link” has not been shown. Similarly, “a first slave distribution switch port configured for communication with the master chassis over a virtual switch link” in the slave distribution switch chassis has not been shown because backup router 3-2 shows only connections to NW and hub 2, but does not show a direct connection to master router 3-1, or otherwise indicate a port for such connection.

Also, claim 1 recites, “a second master distribution switch port configured to receive management instructions from a satellite switch. As discussed with respect to claim 14, Shinomiya does not show a satellite switch, and does not show receipt of management instructions from hub (2), which was cited as a satellite switch.

Also, claim 1 recites, “a master distribution switch chassis” and “a slave distribution switch chassis.” In contrast, Shinomiya shows master router 3-1 and backup router 3-2 in Figure 14, but does not indicate that they are each in a separate chassis.

The Office action acknowledged that Shinomiya does not show linecards and supervisor cards of claim 1. Walsh was cited as showing these features. However, there is no reason to combine the references in the manner of claim 1 and Walsh teaches away from such a combination. In particular, Figure 1 of Walsh shows a single backplane 101 connected to RCP A 102a and line cards 108a, and also connected to RCP B 102b and line cards 108b. Thus, it appears that all of these elements are in a single chassis to provide redundancy within the chassis. Walsh thereby teaches away from providing such components separately in a master distribution switch chassis and a slave distribution switch chassis in the manner of claim 1.

Claims 2-12 depend from claim 1 and are submitted to be allowable at least for depending from an allowable base claim. Furthermore, claims 2-12 recite additional claim elements that have not been shown in the references.

For example, claim 3 as amended recites, “the virtual switch link comprises a control virtual switch link and a physically separate data virtual switch link.” No such separate links are shown by the cited portion of Shinomiya, which states, “it is assumed that VRRP is applied to only a single pair of transmission/reception port 30, 31 out of two transmission/reception port pairs 30, 31 and 30-1, 31-1,” paragraph [0048].

With respect to claims 5, 15-18, 22, and 29, the Office action acknowledged that various claim elements (“the virtual switch link protocol comprises a field indicating whether a packet

has traversed the virtual switch link, a source port identifier, a destination port index, source flood information, VLAN information, or data plane priority information") were not taught by the combination of Shinomiya and Walsh. The Office action cited "admitted prior art," apparently based on taking of official notice. No admission is made with respect to these claim elements. To the extent that official notice is taken that such elements are well known, such taking of official notice is traversed. It is submitted that these elements are not facts capable of instant and unquestionable demonstration as being well-known, and are therefore taking of official notice is not appropriate. "Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known." MPEP 2144.03A. To the extent that the Examiner is relying on personal knowledge, an affidavit or declaration by the Examiner is requested. "If the examiner is relying on personal knowledge to support the finding of what is known in the art, the examiner must provide an affidavit or declaration setting forth specific factual statements and explanation to support the finding." MPEP 21144.03C. Because the claim elements of claims 5, 15-18, 22, and 29 have not been shown in the prior art and have not been properly officially noticed, no *prima facie* case of obviousness has been stated with respect to these claims, and therefore the rejections should be withdrawn.

With respect to claims 19-21, the Office action acknowledged that the combination of Shinomiya and Walsh does not teach utilizing a virtual switch link protocol to determine whether an access control list should be applied to a frame, whether a QoS designation should be applied to a frame, or whether a frame is a MAC notification frame. The Office action cited "admitted prior art," apparently based on taking of official notice. No admission is made with respect to these claim elements. To the extent that official notice is taken that such elements are well known, such taking of official notice is traversed. It is submitted that these elements are not facts capable of instant and unquestionable demonstration as being well-known, and are therefore taking of official notice is not appropriate. "Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known." MPEP 2144.03A. To the extent that the Examiner is relying on personal knowledge, an affidavit or declaration by the Examiner is requested. "If the examiner is relying on personal knowledge to support the finding of what is known in the art, the examiner must provide an affidavit or declaration setting forth specific factual statements and explanation to support the finding." MPEP 21144.03C. Because the claim elements of claims 19-21 have not

been shown in the prior art and have not been properly officially noticed, no *prima facie* case of obviousness has been stated with respect to these claims, and therefore the rejections should be withdrawn.

Claims 7 and 12 were rejected under 35 U.S.C. 103(a) as being unpatentable over Shinomiya in view of Walsh, as applied to the parent claim, and further in view of Kanekar (U.S. 6,751,191). Kanekar has a date of patent of June 15, 2004, while the present application has a filing date of September 18, 2003. Therefore, it is submitted that Kanekar, if it qualifies as prior art under section 102, does so only under one or more of subsections (e), (f), and (g). Section 103(c) states that such prior art shall not preclude patentability where commonly owned with the claimed invention.

Statement of Common Ownership

The present application (application no. 10/666,306) and US Patent application No. 09/342,859 (now US Patent 6,751,191 “Kanekar”) were, at the time the invention of the present application was made, owned by Cisco Technology, Inc.

The above statement is believed to be sufficient evidence to establish common ownership per MPEP 706.02(l)(2) II. Therefore, Kanekar cannot be used to preclude patentability of the present claims (see MPEP 706.02(l)(1)) and the rejection should be withdrawn.

Conclusion

Accordingly, the present application is submitted to be in condition for allowance and an indication of allowance is requested. Should the Examiner have any remaining issues to discuss, a telephone call to the undersigned at (510)663-1100 would be appreciated.

Respectfully submitted,  
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